

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF OKLAHOMA**

(1) LOYD SMITH, an Individual,

Plaintiff,

vs.

(1) IMPERIUM INSURANCE COMPANY,
a Foreign Corporation,

Defendant.

Case No. 6:24-cv-00175-DES

JOINT STATUS REPORT

JURY DEMANDED: X Yes No

I. Summary of Claims:

Please see Plaintiff's Complaint filed on May 17, 2024. (Doc. 2).

II. Summary of Defenses:

Defendant Imperium Insurance Company ("Imperium") filed a Motion to Dismiss on July 8, 2024. (Doc. 15). In its motion, Imperium argues that Plaintiff has failed to state a breach of contract claim because it is duplicative of his bad faith claim, Plaintiff's bad faith claim is not ripe for adjudication as the Underlying Lawsuit is currently on appeal and there has not been a final determination of liability and damages in the Underlying Lawsuit, and, for these reasons, Plaintiff's claims in this lawsuit should be dismissed. In the event that Imperium's motion to dismiss is not granted, Imperium will answer Plaintiff's Complaint and set forth its defenses to the merits of Plaintiff's claims.

III. Motions Pending:

Imperium's Motion to Dismiss filed July 8, 2024. (Doc. 15).

IV. Are Dispositive Motions Anticipated?

Plaintiff does not anticipate filing any dispositive motions at this time.

Defendant will discuss dispositive motions in the event that Imperium's motion to dismiss is not granted.

V. Stipulations:

A. Jurisdiction Admitted: X Yes **X** No

Plaintiff admits to the jurisdiction of this Court.

Imperium disputes subject matter jurisdiction as discussed in its pending Motion to Dismiss. (Doc. 15).

B. Venue Appropriate: **X** Yes No (If no, explain.)

C. Facts:

Imperium issued liability insurance policies to Yocham Trucking, Inc., ("Yocham") under which Plaintiff qualified as an insured in connection with the underlying lawsuit styled *Ethan Bates v. Yocham Trucking, Inc. et al.*, case number CJ-2021-72, in the District Court in and for Wagoner County, Oklahoma (the "Underlying Lawsuit"). The Imperium insurance policies provided a combined limit of liability of \$2 million.

In the Underlying Lawsuit, Ethan Bates ("Bates") alleged that, on October 5, 2020, he was riding his bicycle to work when he was hit from behind by a semi-truck being driven by Plaintiff, an employee of Yocham (the "Accident"). Bates alleged that he suffered personal injuries as a result of this collision.

On February 16, 2024, the jury in the Underlying Lawsuit returned a verdict in favor of Bates in the amount of \$7.5 million. With a 5% reduction for Bates's contributory negligence, the total amount awarded against Plaintiff and Yocham was \$7,125,000. Imperium filed an appeal of that verdict on April 17, 2024 (the "Appeal") which is currently pending before the Supreme Court of Oklahoma. Imperium has provided a defense to Plaintiff and Yocham in the Underlying Lawsuit.

A month after Imperium filed the Appeal, Plaintiff filed this lawsuit against Imperium asserting breach of contract and bad faith for its failure to settle the Underlying Lawsuit.

D. Law:

Oklahoma substantive law applies.

VI. **Fed. R. Civ. P. 26 Discovery Plan:**

Plaintiff requests eight ("8") months to conduct discovery.

Imperium contends that no discovery is necessary at this time since Plaintiff's claims should be dismissed as premature, without prejudice for potential refile after the Underlying Lawsuit has concluded and all appeals are final.

VII. Do all parties consent to trial before Magistrate Judge? **X Yes** ____ No

VIII. Settlement Plan

Plaintiff requests a Settlement Conference take place after the close of discovery.

Defendant submits that a private mediation of the Underlying Lawsuit is currently scheduled for July 29, 2024 which, if resolved, would also resolve the claims made by Plaintiff in this lawsuit¹.

IX. Do the parties request that the Court hold a scheduling conference?
Yes **X No**

X. Estimated number of days required for trial:

Plaintiff: 4-5 days

Defendant: Imperium has not made a jury demand at this time.

Respectfully submitted this 12th day of July 2024.

RUSH LAW

/s/ Jason Rush

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IMPERIUM INSURANCE COMPANY

¹ Plaintiff disagrees with this statement.